United Nations CCPR/C/NOR/CO/6/Add.2

International Covenant on Civil and Political Rights

Distr.: General
17 January 2014

Original: English

Human Rights Committee

Concluding observations on the sixth periodic report of Norway

Addendum

Information received from Norway on follow-up to the concluding observations*

[27 June 2013]

Introduction

1. Reference is made to Special Rapporteur Christine Chanet's letter 3 April 2013 and the decisions of the Human Rights Committee at its 107th session on Norway's follow-up report.

The national institution for human rights

2. As to the Committee request for information on Norway's national institution for human rights, no decision on the format of the new national human rights institution, its precise mandate, objectives, activities and monitoring mechanisms, has yet been taken. The Ministry of Foreign Affairs has, with assistance from an interministerial working group, reviewed possible changes to the national human rights institution and produced a consultation document that outlines several options in this regard. The document has been circulated for general review to relevant organizations and NGOs with a response deadline of 17 September 2013. The decision on the shape and mandate of the new national institution will be based on this process.

* The present document is being issued without formal editing.

The use of coercion in mental health care

Measures to reduce the use of coercion against mental health patients

3. The Committee has requested additional action to reduce the use of force against mental health patients and to strengthen the monitoring and reporting system in mental health care institutions. In this regard, Norway refers to the national strategy for increased voluntariness in the mental health services (2012-2015), which is the Government's answer to the main challenges in this area: to reduce the total amount of coercion (both forced admissions, means of coercion and forced treatment/medication), to reduce the geographical differences in the amount of use of coercion and to make sure that every decision on use of coercion is reported properly to the national data base.

4. An important dimension of the strategy is that it introduces a broad set of measures obliging all levels of the specialist sector (from hospital clinics up to the Ministry of Health and Care Services) in a way that has not been seen before. It is also parts of these efforts that the Ministry of Health and Care Services has set a goal for the hospitals to reduce the amount of forced admissions and means of treatment with 5 percent in 2013.

5. The Ministry of Health and Care Services considers these ongoing measures to be an adequate current response to the challenges pointed out by the Committee while bearing in mind that it remains to be seen what the effects of the strategy on the use of force in Norwegian mental health institutions will be.

6. The Directorate of Health is responsible for implementing the measures on the national level of the strategy. The Directorate reported in March 2013 that most of the measures have been started up. Furthermore, the Government puts great efforts in finalizing the rearrangement of specialist mental health care, which started with the Parliament supported step-up plan for mental health (1999-2008). At the core of this requested adjustment, reflecting the recommendations from the WHO and EU, is the acknowledged need to build more accessible and comprehensive services able to support and treat persons in their living environment (at home, at work, in school, etc.).

7. An example of the Norwegian efforts in this respect is the establishment of around 150 ambulant/outreach treatment teams since 2005 and the increasing use of patient managed hospitalization. Experiences from these arrangements show a decreased need for admissions to hospitals, including forced admissions. Norway considers the ongoing work with rearranging specialist mental health care as vital not only for the overall quality of the services to persons with mental health problems, but also for succeeding in reducing and safeguarding the use of coercion in mental health care.

Data on the use of coercion, including on the use of electroconvulsive treatment

8. The Committee has also requested additional data on the use of coercive force in the mental health care. In this regard, Norway submits the following information to the Committee.

9. In 2011 approximately 5 600 persons were admitted to mental health hospitals by force, in a total of 8 300 times. This amounts to 18 percent of all admissions to mental health hospitals for adults. The numbers are about the same as in 2010 and there are only minor differences from previous years. The amount of forced admissions varies significantly between the hospitals and between the hospital regions. These variations appeared also in 2009 and 2010. There is no certain knowledge about what causes the variations, but a reasonable explanation could be a possible varying distribution of illnesses in the population across the country and different ways of organizing and practicing mental health treatment.

10. The most recent statistics on the use of means of coercion against persons admitted by force to hospitals are from 2009.[1] The study may seem to indicate an increase in the use of belts, fixation, shielding and isolation compared to 2007, but, since the investigation in 2009 was far more comprehensive than earlier, this finding is considered very uncertain. Beyond this, reference is made to the measures listed as item 10 to 14 in the national strategy document (organized under the topics "Documentation" and "Knowledge development and research").[2]

11. Norwegian law does not allow electroconvulsive treatment (ECT) without the patient's consent. The only, narrow exception is when ECT is regarded necessary for a lifesaving purpose. A Norwegian study points out great variation in the practice and organization of ECT in different countries, including within Norway.[3] National professional guidelines for the use of ECT are expected to be issued in 2014. As for today there are no national statistics on the use of ECT. It is planned that a register for such use will be implemented in 2014.

Police custody and pre-trial detention of children

The criteria "unconditional necessity"

12. The Committee has asked for additional information on the meaning of the criteria "unconditional necessity". This is the criteria for use of police custody and pre-trial detention of children, to be found in section 184 of the Norwegian Criminal Procedure Act.

13. As a preliminary point, it is submitted to the Committee's attention that in Norway a statute's preparatory works are considered an important and legitimate means of statutory interpretation. This legal methodology is well-established, also in the jurisprudence of the Norwegian Supreme court.

14. From the preparatory works of section 184 one can read that in certain cases police custody and pre-trial detention of children are considered justified (cf. Prop. 135 L (2010-2011) section 7.4.4 and section 14.4). This may be due to the needs of the criminal investigation, both to prevent the suspect from tampering with evidence or evading prosecution, or in order to prevent him from harming himself or committing another criminal act. Furthermore, it is not possible to neglect that in exceptional cases even young children may be responsible for abhorrent acts, including murder, and that this may justify depriving the charged person from his or her liberty.

15. Still, it is explicitly stated in the preparatory works that the threshold for using police custody or pre-trial detention of children shall be very high. This is due to the fact, which is also elaborated upon, that the physical and psychological effects of deprivation of liberty may be severe and that, other things equal, such deprivation may be experienced as much worse for children than for adults. It is specified explicitly that it is an absolute requirement that no other practical or defensible alternative exists.

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[1] "Innsamling og analyse av data om bruk av tvangsmidler og vedtak om skjerming i det psykiske helsevernet for voksne i 2009" Kompetansesenter for sikkerhets-, fengsels- og rettspsykiatri i Helseregion Sør-Ost.

[2] http://www.regjeringen.no/upload/HOD/Bedrekvalitet-okt_frivillighet.pdf

[3] "Elektrokonvulsiv terapi (ECT). På tide med norske retningslinjer?" (Master thesis in health administration.) Svein Martin Luth 2010, University of Oslo.

16. Thus, it is clear that the introduction of the criteria "unconditional necessity" was meant to clearly limit the use of both police custody and pre-trial detention of children. It is submitted that the practical consequence of this statutory approach is that such measures can only be legally justified in the most exceptional cases.

17. Moreover, it goes without saying that the threshold for use either of police custody or pre-trial detention will, relative to the length of the deprivation of liberty, be progressively raised. In this regard, reference can also be made to section 185 of the Criminal Procedure Act, from which it follows that if the court decides to remand the person charged in custody, it shall at the same time fix a specific time-limit for such custody if the main hearing of the case has not already begun. If the person charged is a child, the time-limit shall be as short as possible and not exceed two weeks. It may be extended by the court's order by up to two weeks at a time.

On measures to keep children separate from adults

18. The Committee has requested information on measures taken to ensure that children are systematically held separately from adults.

19. Reference can in this regard firstly be made to Norway's 2009 State report, where the issue of juvenile offenders was expanded upon (cf. paras 150 to 155). As the Committee is aware, Norway has made a valid reservation to Article 10, paragraphs 2(b) and 3, which would otherwise have provided a legal obligation to keep young criminal offenders and young convicted persons separated from adult prisoners.

20. In a nutshell, the motivation for this reservation has concerned the low number of juveniles that are at any particular moment either in police custody, under pre-trial detention or convicted to prison sentence. Most of the time this would be no more than ten in total, spread over Norway's vast territory (cf. Prop. 135 L (2010-2011) section 2.6.4). The concern has been that a strict policy of separating children from adults would then lead to the children being largely isolated – at least in so far as a principle of proximity is also accommodated (the principle being that the children, as other inmates, should as far as practically possible and appropriate be committed to a prison in the vicinity of their home district).

21. Still, Norway is doing its best to accommodate the relevant (and sometimes conflicting interests) in this field. As mentioned already in Norway's 2009 report, separate prison units for young offenders have been planned for some time (cf. para. 153). Currently, one juvenile prison unit has been established in Bergen (in the western part of Norway), with a capacity to accommodate 4 juvenile prisoners, to be used both when juveniles are remanded in custody and when serving a sentence. Another unit, to be localized in the eastern part of the country, is also being planned.

22. Although the intention is that this latter unit shall be established as soon as possible, there is currently no accurate estimate as to when it will be operational. In this respect, it can also be mentioned that to improve the conditions for this group of inmates, until the second juvenile unit is established, Oslo prison has employed 3 activity therapists, for the benefit of juveniles and young adults. The therapists' arrangements take place in a separate unit during the daytime, evenings and some weekends. They apply to prisoners remanded in custody as well as those serving a sentence. The juveniles and young adults are not separated from adults in the units where they live during their prison stay.

23. The issue of keeping juvenile prisoners separated from adults, should also be put in context with a newly adopted "sanctions regime", called the "juvenile sentence", based on the principle of restorative justice. The juvenile sentence is intended to be an alternative to sentencing juveniles to prison. Social control, in the form of close follow-up, will replace the physical control that would otherwise be exercised in prison. It is a sanction to be

implemented locally, in the community where the convicted person lives. The juvenile sentence will involve close contact between the offender, their personal network, various levels of the justice sector and other public bodies, all of which will be part of an individually adapted follow-up program.

24. The legislation on juvenile sentence has not yet entered into force in general. A pilot project in two cities – to try out the new sanction – has, however, been initiated, and it is hoped that the project will provide valuable experience when the juvenile sentence is later implemented across the country. One juvenile sentence has already been passed.